Course: **CM 4490/02 & 6120/01 -Dispute Resolution**

Classroom: H 339  
Class: Monday and Wednesday 5:00 P.M.—7:50 P.M., starting May 14, Academic Building Room 323

Instructor: Nicholas Papeacos  
Telephone: 404 588-3422 (office) 770 757-7284 (cell)  
Fax: 404 588-3423  
E-mail: (preferred) [nsp@chamberlainlaw.com](mailto:nsp@chamberlainlaw.com); alternate npapeac@kennesaw.edu

Texts: *Gain the Edge*, by Martin E. Latz.

Additional reading material for selected topics in the Course will be put on the class website or handed out in class the week prior to the class when the material will be discussed.

Reading Assignments and Projects are expected to be completed by the dates/deadlines specified.

Grading:

<table>
<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract clause drafting</td>
<td>10%</td>
</tr>
<tr>
<td>In Class Case Study</td>
<td>30%</td>
</tr>
<tr>
<td>Mid Term Exam</td>
<td>25%</td>
</tr>
<tr>
<td>Final Exam</td>
<td>25%</td>
</tr>
<tr>
<td>Class Participation</td>
<td>10%</td>
</tr>
</tbody>
</table>

Topical Course Outline—See Page 3

Class Schedule & Assignments—See Page 4

Course Objectives:

Basic to any dispute in the construction industry is an understanding of the financial consequences of legal risk. We will survey the risks faced by the different participants in a construction project.

The Course provides an overview of the negotiation process, culminating with a study of various modes of dispute resolution, with an emphasis upon those employed regularly in the design professions and the construction industry.

Focus will be upon: understanding individual and organizational behaviors that affect the development of needs and objectives; creation of a better understanding of the negotiation process; development of planning for the conduct of negotiations; development of both distributive (win-lose) and integrative (win-win) bargaining strategies; evaluation of modes of communication and techniques of persuasion designed to improve negotiating effectiveness; consideration of the role of power and personality on bargaining outcomes; analysis of ethical
issues likely to arise in conflict resolution; the development of a framework for ethical decision-making; and an exploration of mediation, fact-finding, case evaluation, arbitration, partnering, litigation and other modes of dispute resolution.

Extensive use will be made of case studies and exercises providing personal involvement in planning and carrying out mock roles in various modes of dispute resolution.

**Educational Objectives/Desired Learning Outcomes:**

The principal educational objectives and desired learning outcomes of the Course are:

A. Using examples of conflict at both the individual and organizational levels, to define the key common social and behavioral aspects required for conflict resolution.

B. Defining of desired goals and outcomes for a construction or design negotiation process, development of a planning framework to achieve stated objectives and application to a specific conflict scenario.

C. Understanding the concepts and components of *distributive* (win-lose) and *integrative* (win-win) bargaining strategies; examining the preconditions and appraising the strategies and their application to specific conflict scenarios.

D. Defining key elements in the strategic bargaining process, including motivational, procedural and other elements and applying them to specific bargaining scenarios.

E. Evaluating and applying the various communication and persuasion techniques designed to improve negotiating effectiveness.

F. Appraising the roles of needs, power and personality on bargaining outcomes.

G. Developing a framework of ethical decision making, and analyzing the ethical issues in specific types of conflicts.

H. Understanding the basic principles of mediation, arbitration, partnering, litigation and other resolution processes, through actual development and participation in exercises involving each of those modes of resolution.

**Lectures, Assigned Readings and Assignments:**

A detailed list of lecture topics and assigned readings is contained in the Course Schedule. Additional relevant material will be handed out for use on the scheduled dates.

The lectures provide the conceptual framework for the Course and supplement (but not replace) the assigned readings. It will be to the students’ advantage to complete the assigned readings before the lecture date so that questions that arise may be discussed more fully. Students are expected to have a good understanding of the lecture and reading materials.

Part of learning includes participating. I will call on students randomly for their input on handling situations arising in dispute resolution. Because of the necessity of participation, all phones must be shut off. Use of cell phones is the class room is disrespectful of the teacher and
your fellow students who are participating. If you were in a courtroom, the phone would be permanently confiscated and you would be held in contempt of court.

Any materials other than the text books will be posted on the class website on Brightspace. You are expected to obtain them from the site in advance of class and to have read them. Also, the classes will be taped and later available on the class website. I offer these tapes as an accommodation for work schedules and the conflicts that do arise. HOWEVER, more than two absences will result in a full letter grade decrease. In addition, the class on 7/11 is a mandatory attendance class.

Exams and Exercises:

There will be regular in-class questions addressed to the students. Your participation is required.

A Mid-Term Examination, covering all material covered through that class period, will be given in class.

A Final Examination will be given at the conclusion of the Course, covering all material covered from the Mid-Term Examination.

There will be a case study that will be studied and analyzed by student teams.

Topical Course Outline

I. Introduction to Key Topics
   A. Negotiation
   B. Mediation
   C. Arbitration
   D. Other Types of Dispute Resolution

II. Negotiation
   A. Distributive Bargaining
   B. Integrative Bargaining
   C. Principles of Communication
   D. Cues and Persuasion
   E. Power, Personality and Social Structure
   F. Planning and Reaction
   G. Closure

III. Mediation
   A. Initiation and Planning
   B. Mediator Selection
   C. Preparation
   D. Structuring Mediations
   E. Mediation Styles
   F. Conduct and Conclusion

IV. Arbitration
   A. Identifying Claims
   B. Arbitrator Selection
   C. Procedures
   D. Conducting Hearings
   E. Framing the Award

V. Litigation
   A. Court Systems
   B. Pleadings
   C. Discovery
   D. Trials
   E. Witness Testimony
   F. Judgments

VI. Risk In Construction
   A. The Financial Interests of Each Party in a Construction Project
## CM 4490/01 & 6120/01 – CLASS SCHEDULE AND ASSIGNMENTS

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic(s)</th>
<th>Assignment/Major Handouts</th>
</tr>
</thead>
<tbody>
<tr>
<td>M 5/14</td>
<td>Introductions-Course Objectives and Content-Risk in the Construction Industry</td>
<td>Powerpoint</td>
</tr>
<tr>
<td>W 5/16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>M 5/21</td>
<td>Critical Contract Clauses</td>
<td>Handout-Seminar Materials</td>
</tr>
<tr>
<td>W 5/23</td>
<td>Critical Contract Clauses-continued</td>
<td>Handout-Seminar Materials</td>
</tr>
<tr>
<td>M 5/28</td>
<td>No Class-Memorial Day</td>
<td></td>
</tr>
<tr>
<td>W-5/30</td>
<td>Analyzing Risk of the Different Players in a Construction Project</td>
<td>PowerPoint</td>
</tr>
<tr>
<td>M-6/4-</td>
<td>Contract Clause-Drafting-Assignment to be performed individually</td>
<td></td>
</tr>
<tr>
<td>M6/11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>W 6/13</td>
<td>Forms of Dispute Resolution-Overview</td>
<td>Handout-Rules of Civil Procedure</td>
</tr>
<tr>
<td></td>
<td>Litigation and the Rules of Civil Procedure-Part 1</td>
<td></td>
</tr>
<tr>
<td>W 6/20</td>
<td>Arbitration-Comparisons with Litigation and Enforcing the Results</td>
<td>Handouts- AAA Construction Industry Rules, Construction Industry Arbitration v. litigation; and The Construction Industry’s Guide To Dispute Avoidance and Resolution</td>
</tr>
<tr>
<td>M 6/25</td>
<td>MID-TERM EXAM</td>
<td>Materials through 6/20/16</td>
</tr>
<tr>
<td>W 6/27</td>
<td>Negotiation-Overview and the Role of Information and Leverage in Negotiating</td>
<td>Latz 17-101</td>
</tr>
<tr>
<td>M 7/2</td>
<td>Using Criteria for Negotiating and Strategies for Negotiating</td>
<td>Latz 102-213</td>
</tr>
<tr>
<td>W 7/4</td>
<td>No class-Independence Day</td>
<td></td>
</tr>
<tr>
<td>M 7/9</td>
<td>Successful Negotiating By the Agenda and Styles of Mediation</td>
<td>Latz 214-246</td>
</tr>
<tr>
<td>W 7/11</td>
<td><strong>Litigation, Arbitration &amp; Mediation in the Real World</strong></td>
<td><strong>Guest</strong></td>
</tr>
<tr>
<td>M 7/16</td>
<td>FINAL EXAM</td>
<td>Materials through 7/11</td>
</tr>
<tr>
<td>W-7/18</td>
<td>Student sessions</td>
<td>Work on Case Study by student teams TBD</td>
</tr>
<tr>
<td>M 7/23</td>
<td>Student sessions-Case Study turned in</td>
<td></td>
</tr>
</tbody>
</table>